IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13972 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AGRICULTURE OFFICER

Versus

PRATAPJI HARCHANDJI

Appearance:

1. Special Civil Application No. 13972 of 1993

Mr. ND Gohil, AGP for Petitioner No. 1

MR DS VASAVADA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/08/2003

ORAL JUDGEMENT

Heard learned AGP Mr. N.D.Gohilfor the petitioner State and Mr. D.S. Vasavada, learned

advocate for the respondent workman. By way of this petition under Article 227 of the Constitution of India, the petitioner State has challenged the order made by the Labour Court Ahmedabad dated 9.9.1992 in Recovery Application No. 1573 of 1984. Under the said order, the labour court allowed the said recovery application and directed the opponent i.e. present petitioner to pay Rs.28,500.00 to the workman within one month from the date of receipt of the said order and also directed to pay the cost of Rs.500.00 to the workman.

This petition was admitted by this court by issuing rule thereon returnable on February 17, 1994, by order dated 20.12.1993 and interim relief in terms of para 11(b) was also granted by this court while issuing rule. The respondent workman has filed affidavit in reply to the present petition.

During the course of hearing of this petition, it was submitted by the learned AGP Mr. N.D. Gohil that the labour court has committed serious error in entertaining the said recovery application. He also submitted that it ought to have been appreciated by the labour court that no order in writing has been given in favour of the respondent workman to work in extra hours and not to enjoy the weekly off or holidays. It was also submitted by him that the Gujarat Agriculture University was taken over by the Agriculture Department of the State of Gujarat on 1st July, 1978 and it is engaged in the research work; the petitioner has to supply water from the different channels of Dantiwada and have to carry out the experiments on the chemical namures, different system of cultivation, different crops, to observe the effects on the land and the growing crops to adopt the scientific methods etc. and hence the labour court ought to have held that the provisions of the ID Act, 1947 would not apply to the petitioner. He also submitted that it ought to have been appreciated by the labour court that the applicant has not done over time work and has never made any such demand and the application was, therefore, not maintainable. Thus, according to his submissions, the labour court has erred in allowing the recovery application. He also submitted that there was no any pre-existing right proved before the labour court and, therefore, the labour court ought not to have made such an order.

As against that, it was submitted by the learned advocate Mr. D.S. Vasavada for the respondent workman that the respondent was working as a watchman and he was required to supervise the entire 18 hectares of the land

belonging to the petitioner; no other watchman except him was appointed for maintaining the lands of the petitioner. It was also submitted by the learned advocate Mr. Vasavada that the documentary evidence produced before the labour court was to the effect that the workman was working with the petitioner even on holidays and other weekly off and no weekly off were in fact given to the workman by the petitioner and no extra amount has been paid in lieu thereof though the petitioner has been continuously working on over time and also without enjoying any holiday or weekly off and, the labour court has, after considering all such oral and documentary evidence on record, made the order in question and, therefore, this petition is required to be dismissed.

I have considered the submissions made by the learned advocates for the parties. I have also perused the order in question made by the labour court. Considering the fact that the recovery application has been filed by the workman under section 33-C-2 of the ID Act, 1947, there is no limitation prescribed by the statutory provisions. According to the respondent, he was attending duties from 18.00 hours in the evening till 8.00 hours of the next day morning, i.e. 14 hours in a day i.e 6 hours more than the legal working hours and yet the petitioner was not paying any over time wages according to the Minimum Wages Act. It was the case of the respondent before the labour court that he was serving with the petitioner from 12.1.1975 and was not paid the over time nor weekly holidays nor given any compensation. In view of the above, recovery application was filed by the respondent before the labour court claiming recovery of Rs.23,500.00 as over time wages and Rs.5000.00 as weekly off holidays and in all Rs.28,500.00 were claimed by the respondent before the labour court.

Written statement to the said recovery application was filed by the petitioner at Exh.11 wherein the claim of the respondent was denied by the petitioner and the contention was raised that the petitioner is not an industry within the meaning of the ID Act, 1947 and no order in writing has been given to the respondent for working in over time beyond the normal working hours.

I have minutely perused the award made by the labour court. In para 4 of the award, the labour court has framed the issues and in para 6 thereof, the labour court has discussed. The workman was examined before the labour court at Exh. 24. It was submitted by the respondent in his deposition before the labour court that

he was attending the work from 6.00 p.m. in the evening till 8.00 a.m. in the next day as a night watchman. Thus, according to his oral evidence, he was attending the work for more than seven hours and yet he was not paid any extra wages or any compensation for the overtime work done by him. Similarly, he was also not given any weekly holidays nor paid any extra wages for the same. It was denied by the workman that he was used to attend the work from 10.00 p.m. to 6.00 and was working for eight hours only. It was also denied by him that he was given weekly holidays. In light of this oral evidence of the workman, it was observed by the labour court in para 6 of the order that he is a layman, as a villager, doing the labour work and therefore,merely because he had not given any complaint in writing for the same, his case cannot be disbelieved. The labour court has, in light of his evidence, observed that his evidence was fully corroborated by the evidence of his co worker Shri Amraji Mohanji at Exh. 26 who was also serving with the opponent as a labourer in agricultural department. he is attending the work from 8.00 a.m. to 6.00 p.m. According to him, at that time, the respondent workman was attending the service in the evening at 6.00 p.m. and was being relieved on the next day morning at 8.00 hours when he used to come for the job. Thus, according to his evidence, the respondent workman used to remain on duty when this witness was coming on his duty at 8.00 hours of the morning and the applicant used to come at 6.00 hours of the evening when the said witness was being relieved by the respondent workman. It was observed by the labour court that it is immaterial if he does not know what happens after he leaves the job at 6.00 hours and he does not know if the applicant i.e. respondent herein used to remain on his noon time. In light of that, it was observed that this witness has no relations with the respondent workman but only because he was knowing the applicant because both of them were working together and therefore, that cannot be made the ground to disbelieve the evidence of the said witness for the workman.

Before the labour court, one witness Mahendrabhai M. Patel was examined on behalf of the petitioner at Exh. 28, another witness MD Modi was examined on behalf of the petitioner at Exh. 30. After appreciating the oral evidence of the said two witnesses for the petitioner, it was concluded by the labour court that these two witnesses are not helpful to the petitioner because they were not serving with the petitioner at the same place where the respondent workman was working at the relevant point of time. Thus, it was observed that

the said two witnesses are not having any personal knowledge, about the working hours of the respondent workman. Witness Mahendra M. Patel Exh. 28 was serving at Disa as Agricultural Officer since March,1991. He was not serving at Disa at the time when the workman was serving at Bardoli prior to 1991. So, he cannot have the personal knowledge about the working hours of the respondent from 1975 to 1984. Muster roll for the relevant period produced by the petitioner before the labour court was taken into consideration by the labour court,at Exh. 29 wherein it was mentioned that at what time the respondent was attending the duty and when he was being relieved. Considering the same, the labour court has come to the conclusion that the presence of the applicant was marked throughout from 11.4.1982 to 17.4.1982 and 18.4.1982 to 24.4.1982 without giving any weekly holidays. In May, 1982, his presence was marked throughout in that month and therefore, it is proved that no weekly holiday was given to the workman and at the same time, he was not paid any extra wages for the same. The witness for the petitioner Shri Mahendrabhai Dhanjibhai Modi who was examined at Exh. 30 before the labour court was also not aware as to whether the respondent was given any weekly holidays and it was admitted by him that the presence of the respondent from 11.4.1i982 to 17.4.1982 and from 16.5.1982 to 22.5.1982 as shown in the muster at Exh. 29 was correct. Another witness for the petitioner Mahendramukar Patel at Exh. 28 also admits that they have 18 H. of land and they have to keep a watchman permanently to look after the crops so that it is not spoiled or damaged by cattle or animals or not stolen away by anybody and for that purpose, the respondent was engaged and was working as a watchman to look after the farm. Considering the evidence of the petitioner namely muster roll Exh. 29 and the oral evidence of the two witnesses at Exh. 28 and 30 as stated above, the labour court has come to the conclusion that none of the witness for the petitioner is having personal knowledge about the working conditions of the respondent.

As regards the contention of the petitioner that it is not an industry within the meaning of section 2(j) of the Act, the labour court has considered the well known judgment of the Apex Court in case of Bengalore Water Supply versus Rajappa 1978 (1) LLJ page 349, Relevant discussion made in the said decision at page 396 that if the institution is carrying out the research work in that case also, the ID Act will apply. It was also held by the apex court that it follows that the research institutes, albeit run without profit motive are

industries. Therefore, considering the evidence on record and the decision of the apex court as aforesaid, the labour court answered point no.1 in the affirmative and answered point no.2 in the negative. Thus, it was held by the labour court that the workman has proved that he had carried out overtime work and was not given weekly holidays and is entitled to claim as alleged and that the application is maintainable and the provisions of he ID Act are applicable to the petitioner. Thereafter, the labour court examined the question of over time allowance and come to the conclusion that the respondent has proved that he had attended over time work for six hours more and was not given weekly holiday and was also not paid extra wages for the same. In statement of claim prepared by the workman, calculations have been shown about his dues at s.9.00 per day for eight hours duty which will come to Rs.1.12 per hour and as he has worked six hours more per day, the figure will come to Rs.39,566.96 for the period from 12.1.1975 to 21.6.1984 at the rate of Rs.13.44 ps. for six months over time work per day. For the weekly holidays, he calculated the figure of Rs.14,143.36 ps. and in all, Rs.53,710.32 has been calculated as per Exh. 31. However, in the recovery application, he claimed only Rs.28,500.00 in all for over time wages and compensation for weekly holidays for the said period and, therefore, the labour court granted only Rs.28,500.00 in his favour as claimed in the recovery application plus costs of Rs.500/- has been awarded by the labour court.

I have considered the observations made by the labour Court. I have also considered the evidence namely oral evidence of the workman, co-worker and the oral evidence of the witnesses for the petitioner at Exh. 28 and 30 as well as the muster roll produced by the petitioner at Exh. 29 which was considered and appreciated by the labour court. In similar situation, in the matter of Baboo Hussain v. N.P. Nopany, reported in 1978 GLR page 360, this Court (Coram : Hon'ble Mr.Justice M.P. Thakkar) has, after considering one unreported decision of this court in Special Civil Application No. 672 of 1963 decided by this Court (Coram:JB Mehta) decided on 6th February,1968, this court has considered the identical question and has observed as under in para 3 of the said judgment:

"3. The conclusion is, therefore, inevitable that the Payment of Wages Authority was right in proceeding to determine the claim of the petitioner on merits. There, however, remains one stumbling block in the way of the petitioner.

On an appreciation of evidence the Payment of Wages Authority came to the conclusion that the petitioner had successfully made out his claim by reason of the fact that the factory was admittedly working three shifts a day throughout the 24 hours and that the Company had not employed any other Boiler Attendant apart from the petitioner. Admittedly, the petitioner alone was a qualified Boiler Attendant employed by the respondent. The learned appellate Judge misread the evidence and came to the conclusion that it was not possible to believe that the petitioner would have been working for all the 24 hours round the clock. The learned appellate Judge observed that it would be humanly impossible for an individual to do so. What the learned appellate Judge failed to realize was that according to the petitioner, he alone was engaged as a Boiler Attendant in order to discharge his duties as such for all the three shifts and that he had to be at the beck and call of the employer throughout this period. What was meant was that he was to be available whenever a need arose apart from the fact that every day he was being called upon to work for several hours beyond the duty hours by way of overtime work. The witnesses examined by the employer have supported the stand of the petitioner to some extent as is evident from the following passage extracted from the judgment:-

'It is true that the evidence of Bhagwatiprasad and Hargovind examined by the opponent to support the say of the applicant that there was only one boiler attendant working in their factory during the relevant period.From this, it can be argued that the applicant alone must be working as boiler attendant for all the 24 hours. It appears that this circumstance has played a great part in making the learned authority to believe the story of the applicant. Now the say of the witness Hargovind is that the presence of the boiler attendant is not necessary for all the 24 hours after boiler starts working. He has stated that there is one fireman working in every shift and that once the boiler starts,the fireman attends the same. He has stated that he also used to look

> after the boiler when the applicant was not on duty. This is not improbable. Hargovind has stated at one place that he used to watch the boiler, when the boiler attendant was on duty. The learned authority has taken out this stray sentence and held that this statement of Hargovind shows that the witness Hargovind never went to look after the boiler in absence of the applicant. I do not think that this was at all just or proper. The witness has stated that that second boiler attendant is appointed in 1964 and that the third boiler attendant is also appointed thereafter. He has stated that even after these boiler attendants are appointed he used to go for a watch and it is in this context that the witness has stated that he used to go to watch even when the boiler attendant was on duty. The learned authority, with due respect to him, has taken out this sentence and read it without taking into account the context in which it was made and given a finding in favour of the applicant. It is, therefore, not possible for me to agree with him in this respect.'

As is evident from the aforesaid passage even the witnesses of the employer were obliged to admit that the petitioner was the only Boiler Attendant attached to the factory which was working during all the three shifts every day.A question similar to the one posed by the present petition in regard to the rights of an employee who is required to be at the beck and call of the employer and keep himself in readiness for making himself available throughout the day arose in Special Civil ApplicationNo.673 of 1963 decided by J.B. Mehta, J. on February 6, 1968. There the question arose in relation to the duties discharged by a Nurse and the Court came to the conclusion that inasmuch as the employee had to keep himself available at all the relevant times, it can be said that he was required to work during that period. The reasoning is obvious. When a serious responsibility rests on the shoulders of an employee and he has by and large to remain on or about the premises of the employer throughout and make himself available to

> meet the demands which can or may arise, the employee cannot attend to any of his private work properly or leave the premises or consider himself free to do what he likes as if he were of duty. Even if, therefore, he may not be actually working, he would have to be considered as being on duty. In view of the legal position as settled by this High Court in the aforesaid matter as early as in 1968, it is specious to argue that the petitioner is not entitled to claim over time wages though he had to keep himself at the beck and call of the employer and to make himself available during all the three shifts, he being the only Boiler Attendant employed by the employer. The view taken by the learned Authority was right and the learned Appellate Judge has committed an error apparent on the face of record in taking a contrary view. The decision of the learned appellate Judge under the circumstances in so far as it is adverse to the petitioner on the aforesaid score must, therefore, be quashed. "

In the aforesaid decision, this court has, thus, considered its earlier decision in special civil application no. 672 of 1963 decided by this Court (Coram : J.B.Mehta,J.) on 6.2.1968. There question in the said decision was in relation to the duties discharged by a Nurse and the Court came to the conclusion that inasmuch as the employee had to keep himself available at all the relevant times, it can be said that he was required to work during that period. The reasoning is obvious. When a serious responsibility rests on the shoulders of an employee and he has by and large to remain on or about the premises of the employer throughout and make himself available to meet the demands which can or may arise, the employee cannot attend to any of his private work properly or leave the premises or consider himself free to do what he likes as if he were off duty. Even if, therefore, he may not be actually working, he would have to be considered as being on duty. In the instant case also, the respondent workman was required to look after the farm having area of about 18 Hectors of land from 6.00 p.m. of the evening till the 8.00 hours of the next day morning and from the muster roll Exh. 29, it was becoming clear that the respondent workman was working continuously without any rest. He was not given any weekly holidays nor was paid any extra wages for such work on weekly holidays. The muster Exh. 29 was the evidence produced by the petitioner itself.

Therefore, in view of the principles laid down by this Court in the aforesaid decision and also in view of the facts and circumstances of the present case, according to my opinion, the labour court was right in appreciating the evidence on record and in doing so, the labour court has not committed any error. The labour court has rightly appreciated the evidence of the witnesses for the petitioner Exh.28 and 30 and the muster roll Exh. 29 produced by the petitioner itself. The respondent has proved his claim of over time wages and extra wages for the work done by him on weekly holidays and other weekly off. There is, therefore, nothing wrong on the part of the labour court in granting the said amount in favour of the respondent workman because the workman has proved his pre-existing rights before the labour court on the basis of the oral as well as documentary evidence produced before the labour court. Therefore, according to my opinion, the labour court has not committed any error while passing the order in question requiring interference of this court in exercise of the extra ordinary jurisdiction under Article 227 of the Constitution of India. Entire decision of the labour court is based on the appreciation of the evidence on record. Therefore, the findings given by the labour court are the findings of facts. Unless and until it is successfully established that such findings of facts given by the labour court after appreciating the evidence on record are contrary to the evidence on record or are perverse, this court cannot interfere such findings of facts. Here, learned AGP Mr. Gohil has not been able to point out that there is any infirmity in the order made by the labour court. He has also not been able to point out that the labour court has committed jurisdictional error. He has also not been able to point out that the conclusions drawn by the labour court after appreciation of the Muster Roll Exh. 29 are unjust, unfair and contrary to Exh. 29 itself. This Court, therefore, cannot interfere with such findings of fact given by the labour court.

This Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality, validity and propriety of the order or award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and

Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution of India in case of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319. The relevant observations in para 4 & 5 are quoted as under :-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by

Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai Tarte this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. V. Northumberland Compensation Appeal Tribunal, ex p Shaw [All ER at p.128] This Court in Chadavarkar Sita Ratna Rao v. Ashalata S. Guram held : [SCC pg.460, para 20]

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a findings are perverse and not based on any material evidence or it resulted in manifest injustice [see Trimbak Gangadhar Telang]. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indiction of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution in case of ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100. Relevant observations in para-12 are quoted as under :-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it [vide State of U.P. v. District Judge, Unnao]. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

Therefore, in view of the aforesaid discussion, there is no merit or substance in the present petition filed by the petitioner and the same is, therefore, required to be dismissed with costs.

For the aforesaid discussion, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated forthwith. There shall be no order as to costs.

At this stage, it was pointed out by Mr. Vasavada that the respondent was claiming over time wages and the wages for the work done by him on weekly holidays and other weekly off for the period from 1975 to 1984 for which the award was made by the labour court in the year 1992 and ten years have thereafter gone and now since this court is dismissing this petition, some suitable directions may be given to the petitioner for complying

with the directions of the labour court within some reasonable period.

Considering the peculiar facts and circumstances of the present case, petitioner is directed to make necessary payments to the respondent workman in terms of the order made by the labour court within two months from the date of receipt of copy of this order.

Dt.14.8.2003. (H.K. Rathod,J.)

Vyas